

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CALLAWAY GOLF COMPANY,

Plaintiff,

v.

ACUSHNET COMPANY,

Defendant.

C. A. No. 06-91 (SLR)

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**DECLARATION OF MICHAEL YAGLEY IN SUPPORT OF
PLAINTIFF CALLAWAY GOLF'S MOTION FOR A PERMANENT INJUNCTION**

I, Michael Yagley, declare as follows:

1. I am currently Vice President of Business Innovations for Callaway Golf Company ("Callaway Golf"). I have been in that position since June 2007. Prior to June 2007, I was Vice President of Product Management for Golf Balls at Callaway Golf.

2. I have been working for Callaway Golf since April 1997, when I started with Callaway Golf as a testing manager in the golf ball division. Up until my latest promotion to Vice President of Business Innovations in June 2007, all of my work at Callaway Golf related to developing, testing, marketing, manufacturing and selling golf balls.

3. As part of my work related to developing, testing, marketing, manufacturing and selling golf balls for Callaway Golf, I received and continue to receive numerous industry reports relating to the competitive environment for golf ball manufacturing and sales, including but not limited to reports detailing: (1) the relative market shares for competitors in the golf ball market as reported by on-course and off-course golf shops, (2) the average selling price of golf ball products as reported by the industry, and (3) the use of golf balls by professional golfers on tour. These reports include Golf DataTech reports compiled on a monthly, quarterly and yearly basis,

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Darrell Survey reports compiled on a weekly basis, and periodic National Golf Foundation reports. These reports are readily available to, and I believe are used by, my counterparts at competitor companies in the golf ball business.

4. Callaway Golf began its golf ball business in mid 1996 with the hiring of _____, Callaway Golf Ball Company. From early 1997 through mid 1999, Callaway Golf hired numerous employees, built a research lab and a manufacturing plant, and spent tens of thousands of man hours and more than _____ to develop, test and manufacture its first golf ball product, codenamed the _____

5. In January 2000, Callaway Golf launched its _____ golf ball design as the Callaway Golf Rule 35 golf ball at the annual Professional Golfers' Association ("PGA") Merchandise Show in Orlando, Florida. This was one of the first solid core, multi-layer, urethane covered balls on the market.

6. Within one month of the launch, Bruce Fleisher won the Royal Caribbean Classic in February 2000 playing the Rule 35 on the Senior PGA Tour. That was the first in a line of tour victories by tour professionals using the Rule 35.

7. From mid 1999 through August 2000, before the Titleist Pro V1 was available to tour professionals or consumers, Callaway Golf's testing protocol included _____

8. Prior to August 2000, I personally observed at least the following tour professional golfers test the Callaway Golf Rule 35: _____

_____ The majority of tour professionals were playing one of Acushnet's Titleist wound ball products (the Titleist Professional, Titleist Tour Prestige or the Titleist Tour Balata) at the time they first tested the Callaway Golf Rule 35.

9. The reaction of these tour professionals to the performance of the Rule 35 was of being simultaneously surprised and impressed. Based on the comments they made to me as they were first testing the ball, they could not believe that with its first attempt to design and _____

manufacture a golf ball, Callaway Golf had made a golf ball that provided much better performance in terms of distance, without sacrificing spin and feel around the green as compared to other balls used by tour professionals at that time. In fact, these tour professionals indicated that given the choice between the wound ball that they were playing at that time and the Rule 35, they would choose the Rule 35 because of its combination of superior distance with control and feel around the green.

10. Based on the reactions of the tour professionals, Callaway Golf anticipated signing contracts with a significant number of tour professionals to play the Rule 35 when their existing contracts expired at year-end 2000.

11. In fact, among those players who were not under contract with another golf ball company, and/or who played on one of the professional tours other than the United States PGA Tour, Callaway Golf experienced a significant number of tour professionals switching from their then-current ball to the Callaway Golf Rule 35 in 2000. For example, the Darrell Survey demonstrates that between January 2000 and December 2000, 25.8% of tour professionals on the Senior PGA Tour switched from their previous, non-Callaway Golf ball to playing the Callaway Golf Rule 35. Many of these players switched without any promise of money from Callaway Golf. Similarly, by December 2000, 10.8% of LPGA tour professionals had switched from their previous, non-Callaway Golf ball to playing the Callaway Golf Rule 35. Again, many switched without any promise of money from Callaway Golf.

12. Attached to my Declaration as Exhibit 1 is a graph that I created using Darrell Survey information showing the ball count percent for Callaway Golf and Titleist on the Senior PGA Tour (now called the "Champions Tour") from 2000-2007, and on the LPGA Tour from 2000-2007. In 2000, Callaway Golf's ball count on the Senior PGA Tour increased rapidly to 25.8%. *See* Yagley Decl., Ex. 1. By 2001, Callaway Golf's ball count on the Senior PGA Tour had increased to 39.7%. *Id.* However, after 2001, when the Pro V1 came on the market and started to make significant gains, Callaway Golf's ball count on Senior PGA started to decline. *Id.* By 2007, Callaway Golf's ball count on the Senior PGA Tour had decreased to 16.6%. *Id.*

A similar trend can be seen on the LPGA. By 2002, Callaway Golf's ball count on the LPGA reached a high of 32.5%. *Id.* However, after 2002, Callaway Golf's ball count with the LPGA began to decrease. *Id.* By 2007, Callaway Golf's ball count on the LPGA was 15.9%. *Id.*

13. By comparison, Titleist's ball count on the Senior PGA and LPGA Tours decreased in 2000 prior to the introduction of the Pro V1 and then increased after the introduction of the Pro V1. *Id.*

14. Attached to my Declaration as Exhibit 2 is a graph created using information obtained by Golf DataTech that plots unit sales for Titleist Pro V1 golf balls and unit sales for Callaway Golf balls that competed with the Pro V1 from 2000 to the present.¹ Attached to my Declaration as Exhibit 3 is a graph reflecting Titleist Pro V1 unit sales that was used by Acushnet during trial, and I understand, plots some of the same Golf DataTech data. As these charts show, after Callaway Golf started selling the Rule 35 to the public in 2000, it quickly began to gain market share. This was significant because the Rule 35 was Callaway Golf's first golf ball offering – a ball that was immediately adopted by a number of professional and elite golfers because of superior performance compared to wound golf ball offerings available from competitors in 2000.

15. However, despite its superior performance and the fact that some tour pros switched to a Callaway Golf ball product, these same charts also show that Callaway Golf has had difficulty gaining additional market share in the golf ball business generally, and in the premium golf ball segment in particular. Specifically, after Acushnet began selling the Titleist Pro V1 in January 2001, the gains that Callaway Golf's Rule 35 was experiencing quickly stopped, and Callaway Golf's market share for premium balls plateaued. *See* Yagley Decl., Exs. 2 & 3.

16. This is so in part because of the large number of tour professionals who are under contract with Acushnet and who use the Titleist Pro V1. By introducing the Titleist Pro V1,

¹ As part of Exhibit 2 to my Declaration, I have attached the actual data obtained from Golf DataTech used to create this chart.

whose construction was very similar to the construction of the Callaway Golf Rule 35, Acushnet was able to keep a majority of its contracted PGA Tour and other tour professionals playing a Titleist ball. Because of the number of tour professionals that Acushnet had under contract in 2000, by offering a ball with similar performance to the Callaway Golf Rule 35, Acushnet was able to re-sign those tour professionals to golf ball contracts and to maintain its position as the ball count leader on the PGA Tour – a position that it continues to enjoy today. This is one of the keys to the pyramid of influence and to successfully selling golf products.

17. The pyramid of influence is a marketing strategy that is widely accepted in the golf industry, including the golf ball industry. It is premised on the concept that golf is an “aspirational” sport, which means golfers look to better golfers for technique and equipment usage. Under the pyramid of influence marketing approach, the top of the pyramid is comprised of tour professional golfers, the second level is comprised of club professionals at local golf courses, the third level is comprised of avid golfers, the fourth level is comprised of recreational golfers, and the bottom of the pyramid is comprised of beginner golfers.

18. The key strategy of the pyramid of influence is to get tour professionals, particularly PGA Tour pros, to play certain products (golf balls, golf clubs, shoes, gloves, etc...), which will in turn influence club professionals to use those same products, and which in turn influences players at all other levels of the pyramid of influence to purchase those same products. Getting tour professionals to play products, however, depends to a large extent on product performance. Based on my experience with tour professionals, tour pros will generally not use a product that puts them at a competitive disadvantage. Moreover, once tour professionals have settled on a product, they become attached to it, and it becomes difficult to get those tour professionals to switch to another company’s product. Only if and when tour professionals change, will the consumers follow under the pyramid strategy. This strategy is fundamental to building product usage among consumers, as well as increasing a company’s reputation and goodwill.

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19. Aside from allowing Acushnet to maintain its market position, the introduction of the Titleist Pro V1 created the impression that Titleist was the technology leader, despite the fact that Callaway Golf had introduced its Rule 35 golf ball ten months earlier. This perception was shared by both golf ball retail outlets and consumers, and impaired Callaway Golf's ability to sell its Rule 35 to retail outlets and to consumers. *See also* ¶¶ 25-28, *below*.

20. After the Pro V1 was introduced, Callaway Golf continued to introduce new, improved golf ball products, including the Callaway Golf CTU 30, HX Red, HX Blue, HX Tour, the HX.Tour and the HX.Tour 56. These new, improved ball offerings permitted Callaway Golf to slowly increase its market share in the golf ball business, as Exhibits 2 and 3 show.

21. In September 2003, Callaway Golf acquired the golf assets of Top-Flite in a bankruptcy auction. Callaway Golf spent more than [REDACTED] to acquire the Top-Flite assets. Among the assets were [REDACTED] which Callaway Golf has improved and continues to use today, and [REDACTED] that included the [REDACTED]

22. Also included among Top-Flite's assets was Top-Flite's share of sales in the golf ball market. By acquiring Top-Flite's market share for golf balls, Callaway Golf more than doubled its market share in the golf ball business. However, despite some market share gains experienced in certain years by Callaway Golf through the introduction of new, improved products and the acquisition of Top-Flite, Acushnet's sales of the Pro V1 over the same period has continued to grow and, in fact, the gap between Acushnet and Callaway Golf is growing wider. *See* Yagley Exs. 2 & 3; *see also* ¶¶ 14-15, *above*.

23. According to industry reports, since Acushnet started selling the Pro V1 in 2000, Acushnet's sales in on- and off- course retail outlets increased from approximately 2 million dozen in 2001 to approximately 4.5 million dozen in 2007. *See* Yagley Decl., Exs. 2 & 3. During that same period, Acushnet's dollar sales resulting from the Pro V1 in on-course and off-course retail outlets increased from 18% to 39% of all balls sold in those outlets. *See* Yagley Decl., Ex. 2. These figures exclude the significant portion of Pro V1 sales made through other [REDACTED]

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retail channels, including sporting goods and mass merchants. Golf DataTech also does not report international sales. My understanding, is that Acushnet's sales of Pro V1 internationally are approximately

24. Based on the information contained in industry reports such as the Darrell Survey, which tracks, among other things, usage of golf equipment by tour professionals, Acushnet has also experienced a substantial growth in overall tour usage of its golf balls since it introduced the Titleist Pro V1 in October 2000. In 2000 when its principal ball offerings were wound golf balls, Titleist's ball count on the six major professional tours (PGA, LPGA, SPGA (now Champions Tour), Buy.com (now Nationwide Tour), European PGA, and Japan GTO) was approximately 57%.² Titleist's ball count on all professional tours had increased to 69% in 2007, when it offered only solid core golf balls. Those tour professionals playing Titleist balls played a Pro V1 family ball almost exclusively.³

25. The success of the Pro V1 golf balls, both among tour professionals and among consumers, has assisted Acushnet in implementing and maintaining another program that affects Callaway Golf's ability to sell golf balls -- the "Titleist Exclusive Pro Shop." Under this program, Acushnet offers on-course golf pro shops special incentives if they agree to carry and sell only Acushnet's Titleist and Pinnacle branded golf balls.

26. After the Pro V1's rapid success, Acushnet negotiated many of these exclusive relationships. Although there are no published statistics on the number of such relationships, it is my belief, based on my dealings with our sales force and my own observation, that prior to the introduction of the Pro V1, these types of arrangements were not nearly as widespread as they became after the introduction of the Pro V1.

27. Based on my personal interactions with these Titleist Exclusive on-course golf shops, based on information that I have learned

²This percentage was calculated by adding up all instances in which a ball was played in all six referenced professional tours, and dividing by the total number of professionals playing in all of those tours for that year.

³ See fn.1, *above*.

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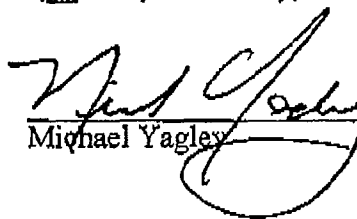
and based on reports that have been submitted to me throughout the years by

there is no question in my view that part of the reason that Acushnet is able to maintain this "exclusive" program is due to the success of the Pro V1 and its popularity among golfers. If the Pro V1 had not had such a strong position on tour and at retail, it is unlikely that many, if any, shops would agree to such an arrangement.

28. When these on-course golf shops enter into exclusive arrangements with Acushnet, it makes it more difficult, and sometimes virtually impossible, for Callaway Golf to sell its golf ball products in these outlets without those shops risking the loss of the benefits associated with the Acushnet program. Callaway Golf continues to experience this problem today when trying to sell its golf ball products to certain on-course golf shops.

29. Since it entered the golf ball manufacturing business, Callaway Golf has spent at least developing, marketing, promoting and selling better golf ball products.⁴ Despite the high performance of Callaway Golf's golf ball products, and all its efforts to design, market and sell better products, Callaway Golf has been unable to approach Acushnet's market position, which has actually improved significantly since it began selling the Pro V1.

Executed under penalty of perjury this 16th day of January, 2008, at Orlando, Florida.


Michael Yagley

⁴ The includes the spent starting the Callaway Golf ball division, the spent to acquire the golf assets of Top-Flite, and substantial expenditures in marketing and research and development.

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2008, the attached document was electronically filed with the Clerk of Court using CM/ECF which will send electronic notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I hereby certify that on January 24, 2008, I have Electronically Mailed the document to the following person(s):

Richard L. Horwitz
David E. Moore
Potter Anderson & Corroon LLP
Hercules Plaza
1313 North Market Street, 6th Floor
P.O. Box 951
Wilmington, DE 19899
rhorwitz@potteranderson.com
dmoore@potteranderson.com

Attorneys for Defendant
ACUSHNET COMPANY

Alan M. Grimaldi, Esq.
Joseph P. Lavelle
Brian Rosenthal
Clint Brannon
Kenneth Donnolly
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
grimaldia@howrey.com
lavellej@howrey.com
rosenthalB@howrey.com
brannonC@howrey.com
donnellyk@howrey.com

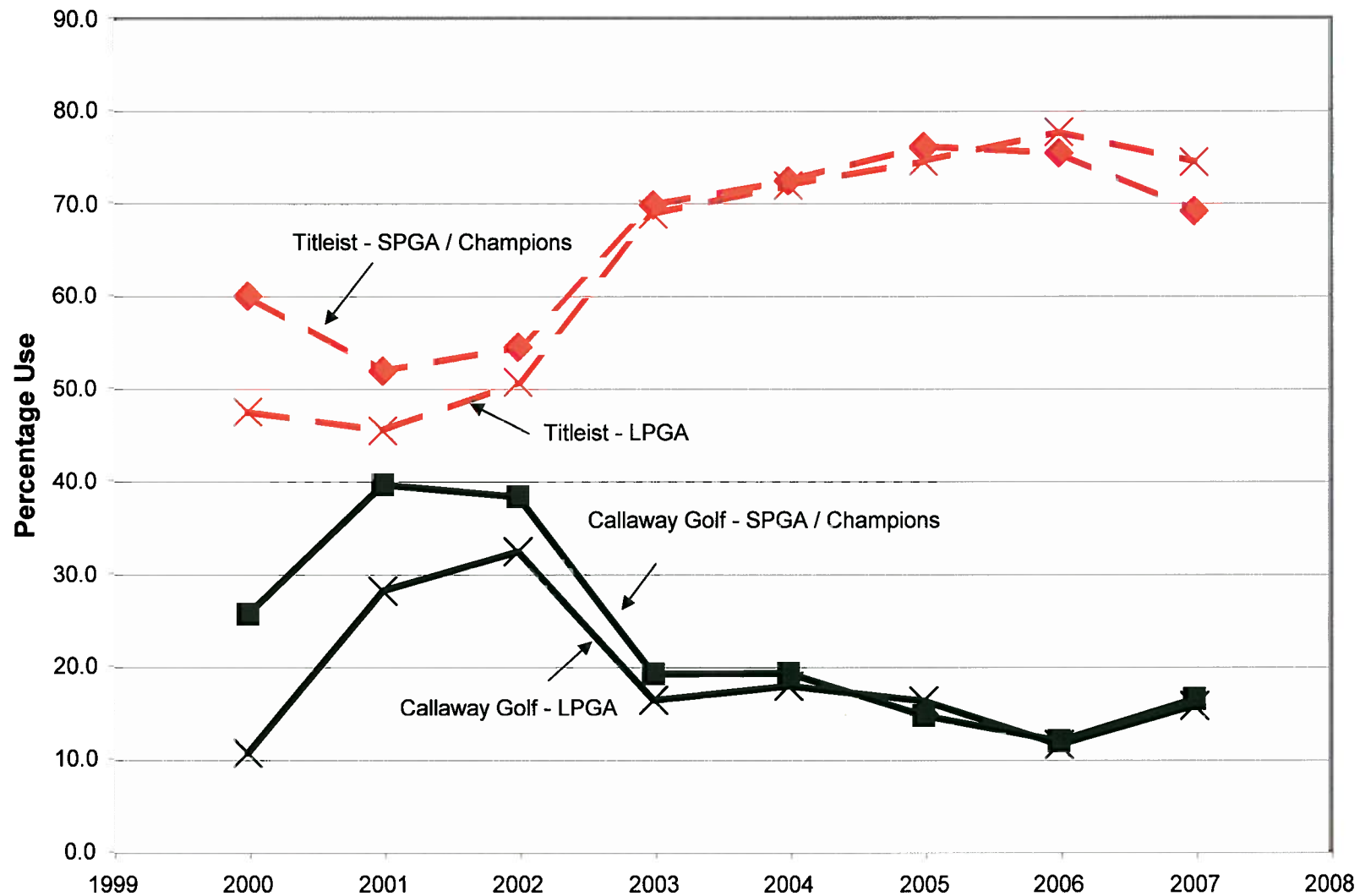
Attorneys for Defendant
ACUSHNET COMPANY

/s/ Thomas L. Halkowski

Thomas L. Halkowski

EXHIBIT 1

Golf Ball Tour Usage



Callaway

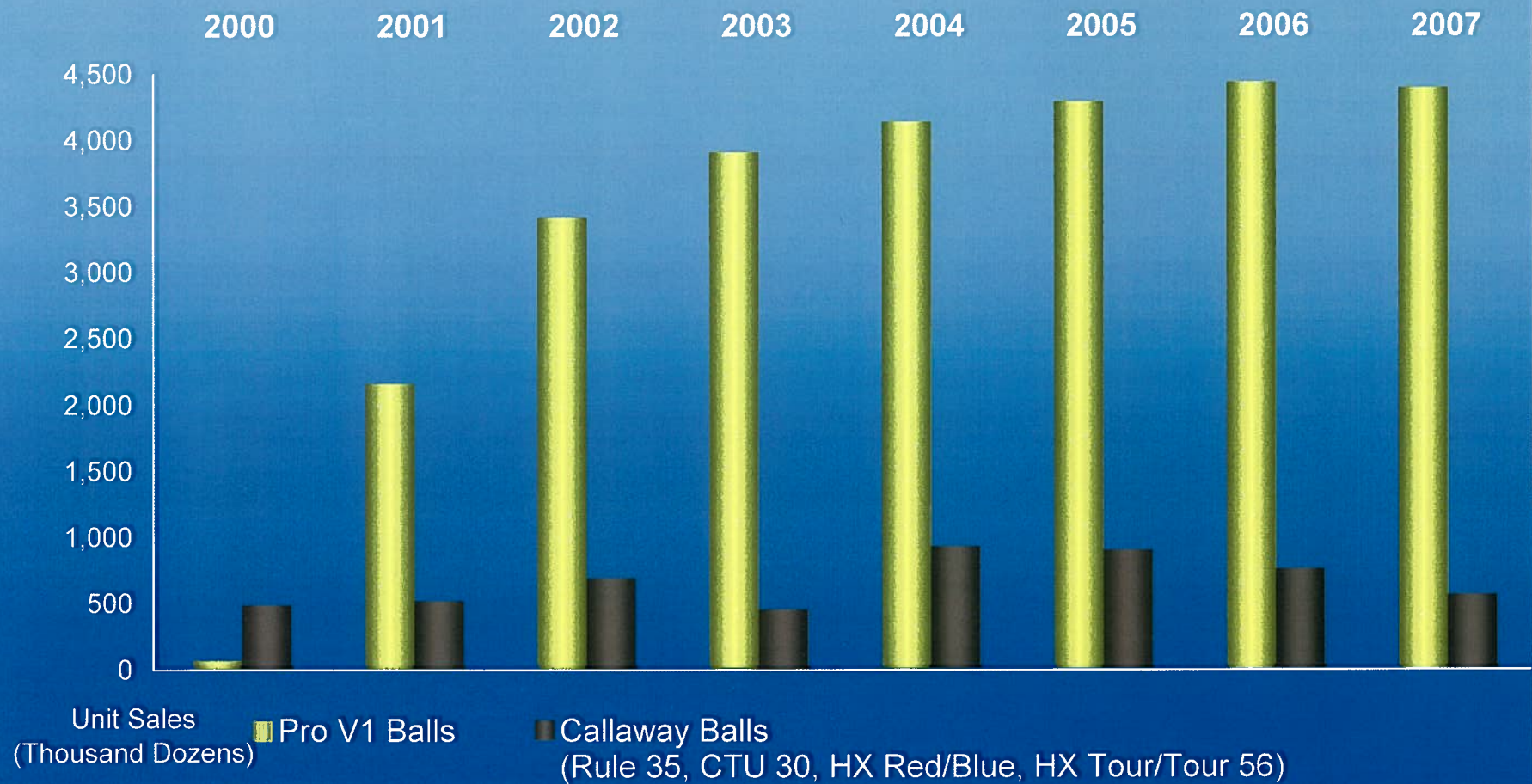
PGA	Callaway Golf - SPGA	Callaway Golf - LPGA
2000	2.9	25.8
2001	6.4	39.7
2002	12.2	38.4
2003		19.3
2004	17.4	19.4
2005	11.2	14.8
2006	7.9	12.1
2007	8.0	16.6

Titleist

PGA	Titleist - SPGA	Titleist - LPGA
2000		60.1
2001		52.0
2002		54.6
2003		69.9
2004		72.5
2005		76.2
2006		75.5
2007		69.2

EXHIBIT 2

Pro V1 vs Callaway: Unit Sales 2000-2007



Source: Golf Datatech - Annual Data, On & Off Course

ON AND OFF COURSE COMBINED - PROV1 VS CALLAWAY								
INDUSTRY UNITS SOLD (thousand dozens)	20,796,480	21,320,480	20,811,790	19,849,770	19,981,710	20,385,630	20,453,540	19,434,750
UNIT SHARE	2000	2001	2002	2003	2004	2005	2006	2007
Pro V1 Balls	0.29%	10.10%	16.38%	19.67%	20.69%	21.02%	21.66%	22.57%
Callaway Balls								
(Rule 35, CTU 30, HX Red/Blue, HX Tour/Tour 56)	2.30%	2.39%	3.27%	2.26%	4.62%	4.39%	3.68%	2.85%

DOLLAR SHARE	2000	2001	2002	2003	2004	2005	2006	2007
Pro V1 Balls	0.51%	18.19%	28.25%	34.77%	35.83%	36.17%	37.06%	39.14%
Callaway Balls								
(Rule 35, CTU 30, HX Red/Blue, HX Tour/Tour 56)	3.91%	3.74%	5.41%	3.47%	6.77%	6.50%	5.75%	4.50%

MODEL UNITS SOLD (thousand dozens)	2000	2001	2002	2003	2004	2005	2006	2007
Pro V1 Balls	60,550	2,153,930	3,409,360	3,903,370	4,134,630	4,285,190	4,430,120	4,387,340
Callaway Balls								
(Rule 35, CTU 30, HX Red/Blue, HX Tour/Tour 56)	478,650	509,820	682,490	446,230	921,570	895,690	753,050	555,230

EXHIBIT 3

Acushnet
Demonstrative
17

Pro V1 vs Callaway: Unit Sales 2000-2006

